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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,042	10/21/2003	Douglas O. Keller	6616-67037	7542

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,042

Applicant(s)

KELLER ET AL.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 11-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37-CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1 Nov 2004
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgement is made of Applicant's IDS received 1 November 2004.

Election/Restrictions

Applicant's election with traverse of Invention I (claims 1-10) in the reply received on 1 November 2004 is acknowledged. The traversal is on the ground(s) that: for Inventions I and II - the combination claim (claim 11) inherently includes a fluid connection to the vacuum source (Remarks page 2, section I, 2nd para.) and the Examiner has not shown one of the requirements of MPEP 808.02 (Remarks page 2, section I, 3rd para.); for Inventions I and III - Examiner has not shown one of the requirements of MPEP 808.02 (Remarks page 3 section II); for Inventions II and III, Examiner has not shown one of the requirements of MPEP 808.02 (Remarks page 3 section III); and, for all the restriction requirements that there is no burden (Remarks page 4 section IV). This is not found persuasive because:

As to Inventions I and II - the plain language of claim 11 does not require the connection to be "fluidly connectable" but only "connectable." The rule is that "[d]uring patent examination, the pending claims must be "given" their broadest reasonable interpretation consistent with the specification (MPEP 2111). Here, the "end surface 86" is defined as having several forms (Specification page 11, line 29). Adhesive or mechanical surfaces can be imagined which would negate the need for a fluid connection. Therefore, it is reasonable to consider fluidly connectable" and "connectable" as of different scope. The claims require different searching area because Invention II would require a search for different types of surfaces for a probe. Thus, for example, a search of the following subclasses would be required - 414/738-741.

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As to Inventions I and III - the language of claim 23 would require additional searching in class 901/14, for example. A burden is shown by the additional needed searching.

As to Inventions II and III - the language of claim 23 would require additional searching in class 47/60, for example, due to a broad interpretation of "plant chamber." A burden is shown by the additional needed searching.

The requirement is still deemed proper and is therefore made FINAL. Claims 11-23 are withdrawn from examination.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 24-31 of U.S. Patent No. 6,688,037 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because both independent claims claim a first probe configured to move in a three-dimensional space, the first probe being fluidly connectable to a vacuum source and having an air-pervious surface, wherein application of a vacuum from the vacuum source to the first probe is

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effective to cause the end surface to pick up a plurality of seeds and hold the plurality of seeds against the end surface, and wherein release of the vacuum from the first probe causes the end surface of the first probe to release the seeds; and a second probe configured to move in three-dimensional space, the second probe being fluidly connectable to a vacuum source and having an apertured end surface, wherein application of a vacuum from the vacuum source to the second probe is effective to cause the end surface of the second probe to pick up a selected number of seeds and hold the selected number seeds against the end surface of the second probe, and wherein release of the vacuum from the second probe causes the end surface of the second probe to release the selected number of seeds. Not disclosed is are the probes placing at a selected first and second positions. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of US 6,688,037 B2 by having the probes place the seed at a selected first and second positions so as to increase the efficiency of the apparatus by placing the seeds at an expected location.

The claims 2-9 of the instant application are disclosed in claims 1-9 of US 6,688,037 B2.

As to claim 10, not disclosed is a vacuum-sensing device. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of US 6,688,037 B2 by adding a vacuum-sensing device so as to ensure the proper running of the apparatus.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Keller et al. ('021 A1) is the instant application's pre-grant publication.

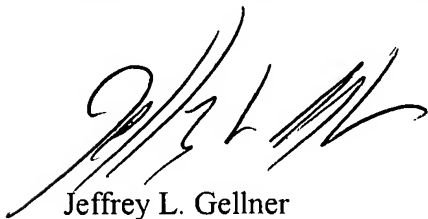
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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner
Primary Examiner